IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 2734 of 2007()

AGAINST THE ORDER DATED 02/03/2007 IN MP. 3293 /2006 IN MP.3294/2006 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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REVN. PETITIONER: PETITIONER

VIDEOCON INDUSTRIES LTD.,
AUTO CARS COMPOUND, ADALAT ROAD,
AURANGABAD, REP. BY BRANCH ACCOUNTANT,
RENNY GOPINATHAN.

BY ADV. SRI.P.JACOB VARGHESE
SRI.V.MANOJ KUMAR
SRI.VARUGHESE M EASO
SMT.PRAISHEEL PRAKASAM
SMT.NISHA JOHN

RESPONDENTS:

1. KUMAR HOME APPLIANCES, PRAMILA BHAVAN, MURANTHAL, PERINAD P.O., QUILON - 691 601.

2. MR.P.S.PRAMOD, AGED ABOUT 40 YEARS, MANAGING PARTNER, KUMAR HOME APPLIANCES, PRAMILA BHAVAN, MURANTHAL, PERINAD P.O. QUILON - 691 601.

3. MRS.PRAMEELA PRAMOD, AGED ABOUT 34, W/O.P.S.PRAMOD, PRAMILA BHAVAN, MURANTHAL, PERINAD P.O., QUILON - 691 601.

4. MRS.REMA MANI, AGED ABOUT 60 YEARS, PRAMILA BHAVAN, MURANTHAL, PERINAD P.O., QUILON - 691 601.

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5. MR.K.S.SADASIVAN, AGED ABOUT 70
YEARS, PRAMILA BHAVAN, MURANTHAL,
PERINAD P.O., QUILON - 691 601.

BY ADV. SRI.D.KISHORE
PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

COST PAID. HENCE THE CONSEQUENCES MENTIONED IN THE ORDER DATED 24/9/07 WILL AUTOMATICALLY FOLLOW. THE MATTER IS CLOSED.

SD/V.RAMKUMAR, JUDGE

26.11.07

/True Copy/

P.A To Judge

V. RAMKUMAR , J

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CRL. R.P. NO. 2734 OF 2007

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Dated this the 24th day of September, 2007.

ORDER

Heard both sides.

The revision petitioner, who is the complainant in a prosecution under Section 138 of the Negotiable Instruments Act, 1881 involving a cheque for a sum of Rs.3 lakhs, challenges the order dated 02.03.2007 passed by the Chief Judicial Magistrate, Ernakulam dismissing the petition to condone the dely of 179 days in filing the complaint.

2. Even though the learned counsel appearing for the 1st respondent /accused opposed the revision submitting inter alia that no valid reasons have been furnished in support of the inordinate delay of 179 days, after hearing both sides, I am of the view that the learned Magistrate was too technical in dismissing the petition to condone the delay. The reason for the delay was the shifting of the complainant's office resulting in the misplacement of the files and later tracing out of the file. In support of the said explanation the complainant was examined as PW1.

3. While it is easy to find out contradictions, omissions and exaggerations in the testimony of witnesses, the courts have to be

realistic in considering the request for condoning the delay. After the decision of the apex court in AIR 1987 SC 1357, there is a judicial shift with regard to the considerations which should weigh with the court when condoning the delay. On the facts of the case, I am not satisfied that the revision petitioner/complainant was guilty of gross latches so as to deserve dismissal of his petition to condone the delay. But, at the same time I am persuaded to put him on terms and accordingly the petition to condone the delay in filing the complaint before the court below will stand allowed and the impugned order will stand set aside if the revision petitioner pays to the counsel for the respondent a sum of Rs.1,000/- by way of costs payable to the accused within two weeks from today. If the said cost is not paid as aforesaid, this revision petition will stand dismissed confirming the impugned order. Post after two weeks.

V. RAMKUMAR, JUDGE.

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